

SUBCHAPTER I—PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

§ 15301. Payments to States for activities to improve administration of elections

(a) In general

Not later than 45 days after October 29, 2002, the Administrator of General Services (in this subchapter referred to as the “Administrator”) shall establish a program under which the Administrator shall make a payment to each State in which the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, notifies the Administrator not later than 6 months after October 29, 2002, that the State intends to use the payment in accordance with this section.

(b) Use of payment

(1) In general

A State shall use the funds provided under a payment made under this section to carry out one or more of the following activities:

(A) Complying with the requirements under subchapter III of this chapter.

(B) Improving the administration of elections for Federal office.

(C) Educating voters concerning voting procedures, voting rights, and voting technology.

(D) Training election officials, poll workers, and election volunteers.

(E) Developing the State plan for requirements payments to be submitted under subpart 1 of part D of subchapter II of this chapter.

(F) Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

(G) Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

(H) Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

(2) Limitation

A State may not use the funds provided under a payment made under this section—

(A) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a payment under this section; or

(B) for the payment of any judgment.

(c) Use of funds to be consistent with other laws and requirements

In order to receive a payment under the program under this section, the State shall provide the Administrator with certifications that—

(1) the State will use the funds provided under the payment in a manner that is consistent with each of the laws described in section 15545 of this title, as such laws relate to the provisions of this chapter; and

(2) the proposed uses of the funds are not inconsistent with the requirements of subchapter III of this chapter.

(d) Amount of payment

(1) In general

Subject to section 15303(b) of this title, the amount of payment made to a State under this section shall be the minimum payment amount described in paragraph (2) plus the voting age population proportion amount described in paragraph (3).

(2) Minimum payment amount

The minimum payment amount described in this paragraph is—

(A) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the aggregate amount made available for payments under this section; and

(B) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such aggregate amount.

(3) Voting age population proportion amount

The voting age population proportion amount described in this paragraph is the product of—

(A) the aggregate amount made available for payments under this section minus the total of all of the minimum payment amounts determined under paragraph (2); and

(B) the voting age population proportion for the State (as defined in paragraph (4)).

(4) Voting age population proportion defined

The term “voting age population proportion” means, with respect to a State, the amount equal to the quotient of—

(A) the voting age population of the State (as reported in the most recent decennial census); and

(B) the total voting age population of all States (as reported in the most recent decennial census).

(Pub. L. 107-252, title I, §101, Oct. 29, 2002, 116 Stat. 1668.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (b)(1)(A) and (c)(2), was in the original “title III”, meaning title III of Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1704, which enacted subchapter III of this chapter and amended section 405 of this title. For complete classification of title III to the Code, see Tables.

This chapter, referred to in subsec. (c)(1), was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 107-252, §1(a), Oct. 29, 2002, 116 Stat. 1666, provided that: "This Act [enacting this chapter and chapter 1526 of Title 36, Patriotic And National Observances, Ceremonies, and Organizations, amending sections 405, 1973ff, 1973ff-1, 1973ff-3, 1973gg-6, and 1973gg-7 of this title, section 438 of Title 2, The Congress, sections 3132 and 7323 of Title 5, Government Organization and Employees, section 8G of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, and section 1566 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 1973ff-1 and 1973ff-3 of this title and section 8G of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5] may be cited as the 'Help America Vote Act of 2002'."

§ 15302. Replacement of punch card or lever voting machines

(a) Establishment of program

(1) In general

Not later than 45 days after October 29, 2002, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) of this section in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a "qualifying precinct").

(2) Use of funds

A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that—

- (A) does not use punch cards or levers;
- (B) is not inconsistent with the requirements of the laws described in section 15545 of this title; and
- (C) meets the requirements of section 15481 of this title.

(3) Deadline

(A) In general

Except as provided in subparagraph (B), a State receiving a payment under the program under this section shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(B) Waiver

If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will

be replaced in time for the first election for Federal office held after November 1, 2010.

(b) Eligibility

(1) In general

A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after October 29, 2002 (in such form as the Administrator may require) that contains—

(A) certifications that the State will use the payment (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3) of this section;

(B) certifications that the State will continue to comply with the laws described in section 15545 of this title;

(C) certifications that the replacement voting systems will meet the requirements of section 15481 of this title; and

(D) such other information and certifications as the Administrator may require which are necessary for the administration of the program.

(2) Compliance of states that require changes to State law

In the case of a State that requires State legislation to carry out an activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.

(c) Amount of payment

(1) In general

Subject to paragraph (2) and section 15303(b) of this title, the amount of payment made to a State under the program under this section shall be equal to the product of—

- (A) the number of the qualifying precincts within the State; and
- (B) \$4,000.

(2) Reduction

If the amount of funds appropriated pursuant to the authority of section 15304(a)(2) of this title is insufficient to ensure that each State receives the amount of payment calculated under paragraph (1), the Administrator shall reduce the amount specified in paragraph (1)(B) to ensure that the entire amount appropriated under such section is distributed to the States.

(d) Repayment of funds for failure to meet deadlines

(1) In general

If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3) of this section, the State shall pay to the Administrator an amount equal to the non-

compliant precinct percentage of the amount of the funds provided to the State under the program.

(2) Noncompliant precinct percentage defined

In this subsection, the term “noncompliant precinct percentage” means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of—

- (A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and
- (B) the total number of qualifying precincts in the State.

(e) Punch card voting system defined

For purposes of this section, a “punch card voting system” includes any of the following voting systems:

- (1) C.E.S.
- (2) Datavote.
- (3) PBC Counter.
- (4) Pollstar.
- (5) Punch Card.
- (6) Vote Recorder.
- (7) Votomatic.

(Pub. L. 107–252, title I, §102, Oct. 29, 2002, 116 Stat. 1670; Pub. L. 110–28, title VI, §6301(a), May 25, 2007, 121 Stat. 171; Pub. L. 111–8, div. D, title VI, §625(a), Mar. 11, 2009, 123 Stat. 678.)

AMENDMENTS

2009—Subsec. (a)(3)(B). Pub. L. 111–8 substituted “November 1, 2010” for “March 1, 2008”.

2007—Subsec. (a)(3)(B). Pub. L. 110–28 substituted “March 1, 2008” for “January 1, 2006”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–8, div. D, title VI, §625(b), Mar. 11, 2009, 123 Stat. 678, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Help America Vote Act of 2002 [Pub. L. 107–252].”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6301(b), May 25, 2007, 121 Stat. 171, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Help America Vote Act of 2002 [Pub. L. 107–252].”

§ 15303. Guaranteed minimum payment amount

(a) In general

In addition to any other payments made under this subchapter, the Administrator shall make a payment to each State to which a payment is made under either section 15301 or 15302 of this title and with respect to which the aggregate amount paid under such sections is less than \$5,000,000 in an amount equal to the difference between the aggregate amount paid to the State under sections 15301 and 15302 of this title and \$5,000,000. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, the previous sentence shall be applied as if each reference to “\$5,000,000” were a reference to “\$1,000,000”.

(b) Pro rata reductions

The Administrator shall make such pro rata reductions to the amounts described in sections 15301(d) and 15302(c) of this title as are necessary

to comply with the requirements of subsection (a) of this section.

(Pub. L. 107–252, title I, §103, Oct. 29, 2002, 116 Stat. 1672.)

§ 15304. Authorization of appropriations

(a) In general

There are authorized to be appropriated for payments under this subchapter \$650,000,000, of which—

- (1) 50 percent shall be for payments under section 15301 of this title; and
- (2) 50 percent shall be for payments under section 15302 of this title.

(b) Continuing availability of funds after appropriation

Any payment made to a State under this subchapter shall be available to the State without fiscal year limitation (subject to subsection (c)(2)(B) of this section).

(c) Use of returned funds and funds remaining unexpended for requirements payments

(1) In general

The amounts described in paragraph (2) shall be transferred to the Election Assistance Commission (established under subchapter II of this chapter) and used by the Commission to make requirements payments under subpart 1 of part D of subchapter II of this chapter.

(2) Amounts described

The amounts referred to in this paragraph are as follows:

- (A) Any amounts paid to the Administrator by a State under section 15302(d)(1) of this title.
- (B) Any amounts appropriated for payments under this subchapter which remain unobligated as of September 1, 2003.

(d) Deposit of amounts in State election fund

When a State has established an election fund described in section 15404(b) of this title, the State shall ensure that any funds provided to the State under this subchapter are deposited and maintained in such fund.

(e) Authorization of appropriations for Administrator

In addition to the amounts authorized under subsection (a) of this section, there are authorized to be appropriated to the Administrator such sums as may be necessary to administer the programs under this subchapter.

(Pub. L. 107–252, title I, §104, Oct. 29, 2002, 116 Stat. 1672.)

§ 15305. Administration of programs

In administering the programs under this subchapter, the Administrator shall take such actions as the Administrator considers appropriate to expedite the payment of funds to States.

(Pub. L. 107–252, title I, §105, Oct. 29, 2002, 116 Stat. 1673.)

§ 15306. Effective date

The Administrator shall implement the programs established under this subchapter in a

manner that ensures that the Administrator is able to make payments under the program not later than the expiration of the 45-day period which begins on October 29, 2002.

(Pub. L. 107-252, title I, §106, Oct. 29, 2002, 116 Stat. 1673.)

SUBCHAPTER II—COMMISSION

PART A—ESTABLISHMENT AND GENERAL ORGANIZATION

SUBPART 1—ELECTION ASSISTANCE COMMISSION

§ 15321. Establishment

There is hereby established as an independent entity the Election Assistance Commission (hereafter in this subchapter referred to as the “Commission”), consisting of the members appointed under this subpart. Additionally, there is established the Election Assistance Commission Standards Board (including the Executive Board of such Board) and the Election Assistance Commission Board of Advisors under subpart 2 of this part (hereafter in this subpart referred to as the “Standards Board” and the “Board of Advisors”, respectively) and the Technical Guidelines Development Committee under subpart 3 of this part.

(Pub. L. 107-252, title II, §201, Oct. 29, 2002, 116 Stat. 1673.)

§ 15322. Duties

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

- (1) carrying out the duties described in subpart 3 of this part (relating to the adoption of voluntary voting system guidelines), including the maintenance of a clearinghouse of information on the experiences of State and local governments in implementing the guidelines and in operating voting systems in general;
- (2) carrying out the duties described in part B of this subchapter (relating to the testing, certification, decertification, and recertification of voting system hardware and software);
- (3) carrying out the duties described in part C of this subchapter (relating to conducting studies and carrying out other activities to promote the effective administration of Federal elections);
- (4) carrying out the duties described in part D of this subchapter (relating to election assistance), and providing information and training on the management of the payments and grants provided under such part;
- (5) carrying out the duties described in part B of subchapter III of this chapter (relating to the adoption of voluntary guidance); and
- (6) developing and carrying out the Help America Vote College Program under subchapter V of this chapter.

(Pub. L. 107-252, title II, §202, Oct. 29, 2002, 116 Stat. 1673.)

§ 15323. Membership and appointment

(a) Membership

(1) In general

The Commission shall have four members appointed by the President, by and with the advice and consent of the Senate.

(2) Recommendations

Before the initial appointment of the members of the Commission and before the appointment of any individual to fill a vacancy on the Commission, the Majority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives shall each submit to the President a candidate recommendation with respect to each vacancy on the Commission affiliated with the political party of the Member of Congress involved.

(3) Qualifications

Each member of the Commission shall have experience with or expertise in election administration or the study of elections.

(4) Date of appointment

The appointments of the members of the Commission shall be made not later than 120 days after October 29, 2002.

(b) Term of service

(1) In general

Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) Terms of initial appointees

As designated by the President at the time of nomination, of the members first appointed—

(A) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) Vacancies

(A) In general

A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Expired terms

A member of the Commission shall serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) Unexpired terms

An individual appointed to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(c) Chair and vice chair

(1) In general

The Commission shall select a chair and vice chair from among its members for a term of 1